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April 29, 2024

Via CM/ECF

The Honorable Margaret M. Garnett
United States District Court for the Southern District of New York
40 Foley Square, Room 2102
New York, NY 10007

Re: *fuboTV Inc., et al. v. The Walt Disney Company, et al.*, No. 24-cv-1363

Dear Judge Garnett:

Pursuant to Rule I(D)(3)(ii) of Your Honor’s Individual Rules and Practices, Plaintiffs fuboTV Inc. and fuboTV Media Inc. (“Fubo”) respectfully request leave to file under seal and in redacted form on the public docket Plaintiffs’ Amended Complaint.

The Parties have met and conferred in good faith about the materials to be filed with redactions and the bases for such designations. Counsel for Fubo, Thomas G. Schultz and Joshua Hafenbrack, met and conferred with counsel for The Walt Disney Company, ESPN, Inc., ESPN Enterprises, Inc., and Hulu, LLC, Michael Addis; counsel for Fox Corporation, Steven Bizar; and counsel for Warner Bros. Discovery, Inc., Adam Hemlock, on April 24, 2024. Counsel for Defendants informed Fubo that they consent to filing these materials under seal.

Fubo respectfully submits that good cause exists for redacting information contained in the Amended Complaint, which falls into two categories: (1) Fubo’s carriage agreements with Defendants and related correspondence, and (2) commercially sensitive internal and proprietary subscriber and marketing data and business strategy information. This information is similar or identical to information reflected in Fubo’s original complaint that the dedicated part judge (Judge Engelmayer) previously ordered sealed. *See fuboTV, et al. v. The Walt Disney Company, et al.*, 1:24-mc-00070 (S.D.N.Y. filed Feb. 20, 2024).

Fubo’s Carriage Agreements with Defendants and Related Correspondence.

Portions of the Amended Complaint describe the terms of Fubo’s carriage agreements with the Defendants, as well as Fubo’s negotiations with Defendants over those carriage agreements. This information is subject to confidentiality provisions contained in the agreements themselves and is commercially sensitive to both counterparties. Courts in this district have recognized that these sorts of contractual materials are appropriately sealed. *See Rubik’s Brand Ltd. v.*

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Flambeau, Inc., 2021 WL 1085338, at *1 (S.D.N.Y Mar. 22, 2021) (granting motion to seal documents containing the terms of confidential trademark licensing agreements); *Skyline Steel, LLC v. PilePro, LLC*, 101 F. Supp. 3d 394, 412-13 (S.D.N.Y. 2015) (granting motion to seal emails revealing confidential negotiations between Skyline and its customers).

Internal Subscriber and Business Strategy Information. Portions of the Amended Complaint reflect proprietary Fubo subscriber data and business strategy information. That information is highly sensitive and would cause Fubo serious harm if disclosed, and courts regularly find that such materials are appropriate sealed. *E.g., Kewazinga Corp. v. Microsoft Corp.*, 2021 WL 1222122, at *3 (S.D.N.Y. Mar. 31, 2021) (sealing confidential research and development information, marketing plans, revenue information, pricing information).¹

For these reasons, the Court should grant Fubo's motion to redact portions of the Amended Complaint.

¹ See also *Skyline*, 101 F. Supp. 3d at 412; *Louis Vuitton Malletier S.A. v. Sunny Merch. Corp.*, 97 F. Supp. 3d 485, 511 (S.D.N.Y. 2015) (advertising expenditures, strategies, policies, and sales); *GoSMiLE, Inc. v. Dr. Jonathan Levine, D.M.D. P.C.*, 769 F. Supp. 2d 630, 649-50 (S.D.N.Y. 2011) (granting motion to seal internal financial information and budgets).

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Respectfully submitted,

/s/ Thomas G. Schultz

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Cc: All Counsel of Record (via CM/ECF)